HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
And
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

W.A. NO.498 OF 2006

-

Between:
Rayi Pattabhirama Rao and another

..... Appellants

AND

Talluri Pentaiah and 3 others.

.....Respondents

::JUDGMENT::

Counsel for the Appellants : Sri D.V.Sitharam Murthy

Counsel for Respondent Nos1&2 : Sri Ratangapani Reddy

Dated 11/9/2006

Per Sri G.S.Singhvi, CJ

This is an appeal for setting aside order dated 3-3-2006 passed by the learned Single Judge whereby he confirmed ad-interim order dated 27-7-2005 passed in WPMP No.19855 of 2005 in Writ Petition No.15634 of 2005 and dismissed WVMP No.2552 of 2005 filed by the appellants for vacating the interim order.

We have heard learned counsel for the parties and perused the record.

Ordinarily, the Division Bench is reluctant to interfere with the discretion exercised by the learned Single Judge in granting or refusing the prayer for interim relief, but, after going through the records of this case, we are convinced that the order under challenge calls for interference.

In the main writ petition, the writ petitioners (appellant Nos.1 and 2 herein) prayed for quashing order dated 30-6-2005 passed by Joint Collector, West Godavari, Eluru whereby he directed Mandal Revenue Officer, Jangareddigudem to implement the orders in village records by mutating the name of Shri Rayi Nagaraju (appellant No.2 herein) in Revenue Survey Nos.361/7, 361/8, 361/9 and simultaneously revoked order passed by Mandal Executive Magistrate and Mandal Revenue Officer, Jangareddigudem under Section 145 of the Code of Criminal Procedure, 1973. In the affidavit filed by respondent No.2 – Yerra Samuel in support of the writ petition, reference has been made to order dated 26-6-2004 passed by the learned Single Judge in Writ Petition No.27632 of 2004 and it has been averred that during the pendency of the title suit filed by him

in respect of the land in question, the Joint Collector could not have directed mutation of the name of respondent No.1 in the village records.

On 21-7-2005, the learned Single Judge issued "Rule Nisi" in the main writ petition. In WPMP No.19855 of 2005 filed by respondent Nos.1 and 2 for suspending the operation of order dated 30-6-2005 passed by the Joint Collector, the learned Single Judge passed the following order:

"Interim Stay.

Notice."

On receipt of the notice issued by the Court, the appellants filed WVMP No.2552 of 2005 with the prayer that interim stay may be vacated.

In the affidavit filed in support of the vacate petition, appellant No.2 averred that order dated 30-6-2005 passed by the Joint Collector did not adversely affect any of the legal right of the writ petitioners because they had already filed suit for title and possession.

The learned Single Judge dismissed the vacate petition filed by the appellants and confirmed the ad-interim order passed by the learned Single Judge, which is under challenge, and the same reads as under:

> "The writ petitioners claim to be in possession of the land for over two decades and half. Aggrieved by the proceedings of the first respondent dated 30-06-2005, directing the Mandal Revenue Officer, Jangareddigudem to implement the orders in the village records by mutating the lands in Survey Nos.361/7, 361/8 and 361/9 of Jangareddigudem, the present writ petition is filed.
>
> The writ petitioners have already approached the Civil Court for declaration of title and possession, and they apprehend that the orders passed by the Joint Collector may

come in the way of the Civil Court in deciding the matter.

I am afraid, this cannot be true. In the earlier litigation, at the instance of the first writ petitioner, a writ petition was filed, being W.P.No.27362 of 2003, in which, this Court already observed that the disputed questions of title and possession cannot be decided by the revenue authorities, and this should be sufficient safeguard to the writ petitioners to pursue their remedy in the Civil Court.

Therefore, the interim order dated 27-07-2005 in W.P.M.P.No.19855 of 2005 is made absolute. W.V.M.P. is accordingly dismissed.

However, it is made clear that there shall be status quo as to the possession as on today. It is further made clear that if any mutation is effected in favour of respondent Nos.3 and 4, the same shall be subject to the orders in the writ petition."

Shri D.V. Sitharam Murthy, learned counsel for the appellants invited our attention to order dated 6-2-2004 passed by another learned Single Judge in Writ Petition No.27362 of 2003 – Talluri Pentayya (respondent No.1 herein) v. Revenue Divisional Officer, Jangareddigudem, West Godavari District and argued that in the face of observation made in the above order that the remedy available to the writ petitioners is by way of civil suit, Writ Petition No.15634 of 2005 should not have been entertained and, in any case, interim order in terms of the prayer made in WPMP No.19855 of 2005 should not have been granted by overlooking the fact that suit for title filed by them is pending in the Court of Principal Junior Civil Judge, Kovvur.

Shri Ratangapani Reddy, learned counsel for respondent Nos.1 and 2 argued that the stay order passed by the learned Single Judge is intended to protect the existing rights of his clients and, therefore, the same does not call for interference. He emphasized that the discretion exercised by the learned Single Judge to grant interim relief to respondent Nos.1 and 2 does not suffer from any

jurisdictional error or patent illegality, which may justify exercise of power by the Division Bench under Clause 15 of the Letters Patent.

We have given serious thought to the respective arguments/submissions. While disposing of Writ Petition No.27362 of 2003 filed by respondent No.1 for quashing order dated 25-9-2002 passed by the Joint Collector and possession certificate dated 24-11-2003 issued by Mandal Revenue Officer, Jangareddigudem, the learned Single Judge observed as under:

> "So far as the possession certificate dated 24-11-2002 issued by the 2nd respondent is concerned, it needs to be observed that the petitioner too was issued such a certificate on 05-08-1998 by the 2nd respondent. It is well settled principle of law that the revenue authorities cannot decide disputed questions of possession and it is only for the Civil Courts to decide such questions, when approached. In that view of the matter, the possession certificates issued either in favour of the petitioner or in favour of the 6th respondent cannot be said to be valid.
>
> The writ petition is accordingly allowed as indicated above. This order, however, cannot be treated as pronouncing in any way, on the possession over any extent of land, either by the petitioner or the 6th respondent."

Respondent No.1 is not shown to have challenged the aforementioned order by filing appeal under Clause 15 of the Letters Patent. Therefore, that order will be deemed to have become final.

Since the writ petition has already been admitted, we do not want to make any observation which may prejudice adjudication of the issue raised therein. However, we have no hesitation to hold that the stay order passed by the learned Single Judge not only suffers from inherent contradictions, but is totally unwarranted and unjustified. The observation made by the learned Single Judge that

the apprehension expressed by the writ petitioners regarding the ambit and scope of order dated 30-6-2005 passed by the Joint Collector, which is subject matter of challenge in the writ petition, is not true and the disputed questions of title and possession cannot be decided by the revenue authorities should have been sufficient to negate the prayer of the writ petitioners for interim relief. It is not possible to appreciate as to how the learned Single Judge could pass interim order ignoring the fact that by taking advantage of the observations contained in order dated 26-2-2004 passed by the learned Single Judge in Writ Petition No.27362 of 2003, the writ petitioners have already availed the remedy by filing civil suit and, in his own opinion, the order passed by the Joint Collector does not have any effect on the litigation filed in the Civil Court. In our opinion, after having refused to approve the apprehension expressed by the writ petitioners and having made an observation that order dated 26-2-2004 passed in Writ Petition No.27632 of 2003 sufficiently safeguards their interest, the learned Single Judge could not have confirmed the ad-interim order.

As a corollary to the above, we hold that the order under challenge is vitiated by an error of law apparent on the face of the record and is liable to be set aside.

In the result, the appeal is allowed. Order dated 3-3-2006 passed by the learned Single Judge is set aside. Consequently, WVMP No.2552 of 2005 filed by the appellants shall stand allowed and interim order dated 21-7-2005 passed in WPMP No.19855 of 2005 shall stand vacated. As a sequel to this, WPMP No.19855 of 2005 shall stand dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Dt.11.9.2006

svs